Chicago Magnesium Castings Company *and* International Molders and Allied Workers Union, Local 233, AFL-CIO-CLC. Case 13-CA-18653

June 18, 1981

DECISION AND ORDER

On December 18, 1980, Administrative Law Judge Maurice M. Miller issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in response and a cross-exception and brief in support thereof.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[3]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Chicago Magnesium Castings Company, Blue Island, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Delete paragraph 1(b) and insert the following as new paragraphs 1(b) and 1(c):

"(b) Refusing to bargain with the Union by dealing directly with employees in the bargaining unit.

"(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act."

2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT refuse to recognize and bargain with International Molders and Allied Workers Union, Local 233, AFL-CIO-CLC, as the exclusive bargaining representative of our employees in the unit set forth below.

WE WILL NOT refuse to bargain with the Union designated above, by dealing directly with our employees within the bargaining unit described below.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL recognize and bargain collectively, upon request, with International Molders and Allied Workers Union, Local 233, AFL-CIO-CLC, as the exclusive bargaining representative of our employees within the appropriate bargaining unit described below, with regard to their wages, hours, working conditions, and other terms and conditions of their employment. If an understanding is reached, we will embody such understanding within a signed agreement. The appropriate unit is:

All foundry production and maintenance employees of the company, exclusive of all office clerical employees, janitors, watchmen, supervisors as defined in the Act, and employees employed in another bargaining

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] In adopting the Administrative Law Judge's conclusion that Respondent violated Sec. 8(a)(5) and (1) of the Act by withdrawing recognition from the Union, we agree with his finding that Respondent, because of its prior unremedied unfair labor practices, was precluded from raising any asserted doubt of the Union's majority status. We therefore find it unnecessary to consider whether, in the absence of such prior unremedied unfair labor practices, Respondent's evidence would amount to objective considerations sufficient to support its asserted good-faith doubt of the Union's majority status.

We agree with the Administrative Law Judge's conclusion that Respondent violated Sec. 8(a)(5) and (1) of the Act by engaging in direct dealing with its employees. In so doing, however, we do not rely on the statements concerning employee pension rights which Respondent's attorney, Treacy, made at the April 23, 1979, employee meeting.

Member Jenkins does not adopt the Administrative Law Judge's statement, which is unnecessary to the resolution of this case, that if Respondent had solicited grievances at the April 23, 1979, meeting such conduct would not have been unlawful unless Respondent also indicated that it would seriously consider and/or remedy the grievances. See his dissent in *Uarco Incorporated*, 216 NLRB 1 (1974).

[3] The Administrative Law Judge inadvertently omitted from his recommended Order a provision requiring Respondent to cease and desist from refusing to bargain with the Union by dealing directly with its employees. We shall modify the recommended Order accordingly.

We find merit in the General Counsel's exception to the Administrative Law Judge's failure to provide a broad cease-and-desist order. Thus, in light of Respondent's prior unfair labor practices found in *Chicago Magnesium Castings Company*, 240 NLRB 400 (1979), and its unfair labor practices committed here, it is clear that Respondent has engaged in a continuing pattern of serious unlawful conduct and has demonstrated a proclivity to violate the Act. Accordingly, we conclude that under the standard of *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979), a broad remedial order is warranted.

unit represented by another duly authorized labor organization.

CHICAGO MAGNESIUM CASTINGS COMPANY

DECISION

STATEMENT OF THE CASE

MAURICE M. MILLER, Administrative Law Judge: Upon a charge filed on April 20, 1979, and duly served, the General Counsel of the National Labor Relations Board caused a complaint and notice of hearing dated June 11, 1979, to be issued and served on Chicago Magnesium Castings Company, Respondent herein. Respondent was charged with the commission of unfair labor practices within the meaning of Section 8(a)(5) and (1) of the National Labor Relations Act, as amended. Respondent's answer, duly filed, conceded certain factual matters, but denied the commission of any unfair labor practice.

Pursuant to notice, a hearing with respect to this matter was held before me on November 27, 1979, in Chicago, Illinois. The General Counsel and Respondent were represented by counsel; the Union's district representative likewise noted his appearance. Each party was afforded a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence with respect to pertinent matters. Since the hearing's close, briefs have been received from the General Counsel's representative and Respondent's counsel; these briefs have been duly considered.

Upon the entire testimonial record,[1] documentary evidence received, and my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent raises no question with respect to the General Counsel's present jurisdictional claims. Upon the complaint's relevant factual declarations, I conclude that Respondent herein was throughout the period with which this case is concerned, and remains, an employer within the meaning of Section 2(2) of the Act, engaged in commerce and in business activities affecting commerce within the meaning of Section 2(6) and (7) of the statute. Further, with due regard for presently applicable jurisdictional standards, I find assertion of the Board's jurisdiction in this case warranted and necessary to effectuate statutory objectives.

II. COMPLAINANT UNION

International Molders and Allied Workers Union, Local 233, AFL-CIO-CLC, is a labor organization which admits certain of Respondent's employees to membership, within the meaning of Section 2(5) of the Act.

[1] Transcription errors have been noted and corrected.

III. THE UNFAIR LABOR PRACTICES

A. *Issues*

This case presents two questions. The General Counsel's contentions may be summarized as follows:

1. That, since February 6, 1979, Respondent has, without proper warrant, refused to recognize the Union as the bargaining representative of its employees, and has refused to meet and bargain with that organization.

2. That, during a meeting held on April 23, 1979, Respondent's representatives improperly bypassed the Union and dealt directly with the firm's employees, by soliciting and/or adjusting grievances, and by making promises of benefit.

Respondent contends that the filing of a decertification petition, supported by the signatures of a majority of its bargaining unit workmen, provided an objective basis for the firm's proclaimed good-faith doubt that the Union continued to represent a majority of Respondent's bargaining unit employees. Further, Respondent denies that any company representatives, during the April 23 meeting noted, solicited and/or adjusted grievances, or made any promises of benefit.

B. *Facts*

1. The Union's prior unfair labor practice charge

a. *Background*

Respondent maintains and operates a foundry where it manufactures magnesium and aluminum castings, sand castings, and die castings. Within the period with which this case is concerned, the firm employed between 20 and 30 foundry production and maintenance workers.

Since 1970 at least, the Union has functioned as the collective-bargaining representative of Respondent's foundry production and maintenance employees. About July 1, 1973, Respondent became a member of the Chicago Foundrymen's Association, designated as the Association herein; that organization represents its member firms in collective-bargaining and labor relations matters, negotiates collective-bargaining contracts for them, and settles grievances between the Union and member companies. Shortly after becoming an association member, Respondent became privy to the Association's then-current contract with the Chicago and Vicinity Conference Board of the International Molders and Allied Workers Union, AFL-CIO-CLC, the Union's parent body.

When the Association's contract terminated on April 30, 1976, a strike ensued. Thereafter, however, the parties negotiated a new contract, effective June 9, 1976, with an April 30, 1979, termination date.

That contract, *inter alia*, defined a two-step grievance procedure. Step one provided that any grievant "shall take the matter up" with his employer's representative, within 5 working days; should he so desire, he could be assisted by a member of his Union's shop committee. If the grievance was not settled, step two provided that the matter "shall be referred" by a union representative, in written form, directly to a Grievance Committee composed of four association and four union designees. Such

referrals must have been comsummated within 10 working days after the concerned employer's first-step answer, or the time specified for such answer. Unless "taken up for adjustment, or appealed" within the discrete time limits contractually specified, grievances were to be deemed waived; however, the parties concerned could extend these time limits in particular cases, by mutual agreement.

b. *Contract grievances*

During September and October 1976 several of Respondent's contractually covered workers initiated wage rate grievances. These grievances were pursued in their behalf by the Union's then shop chairman, David Session; direct discussions between several union and company representatives, however, produced no settlements. The Union thereupon formally requested a step-two grievance committee conference.

During November 1976, two grievance committee meetings were held. Agreements were reached regarding the disposition of several grievances; others, however, remained unresolved.[2] Later, during November and December 1976, the Union's shop chairman filed several additional grievances. On December 22, however, Session was laid off, purportedly because of his failure to satisfy Respondent's production standard for the work to which he had been assigned. He filed a grievance with respect to his layoff.

c. *Subsequent developments*

On February 9, 1977, during a bilateral grievance committee conference, Session's layoff grievance was denied. Subsequently, however, he filed a second grievance challenging Respondent's failure to recall him. On March 24, the grievance committee considered the laid-off shop chairman's second grievance. No decision with respect thereto was reached; pursuant to consensus, further deliberations regarding the matter were scheduled for a prospective April 1 meeting.

Shortly thereafter, specifically on March 28, Respondent submitted its resignation from the Association. On March 31, the Association formally accepted Respondent's resignation and notified the Union's parent organization that it had done so.

Then, on March 31 or April 1, during a telephone conversation with the district representative of the Union's parent body, the grievance committee chairman, Hodgson, speaking for the Association, declared that the previously scheduled meeting was no longer required, since Respondent was no longer an association member; he stated that the Association *would not participate in further grievance meetings* with respect to matters wherein Respondent might be involved.

Despite the union district representative's contention that Respondent was still bound by the Association's current contract, both Respondent and the Association, subsequent to March 31, 1977, consistently refused to conduct step-two proceedings concerning grievances raised by Respondent's workers, pursuant to the Association's contract with the Union's parent. Such grievances were, however, being filed; they remained pending. In May 1977, Hodgson told union representatives that the Association no longer represented Respondent, and therefore *would not conduct step-two grievance meetings* for the firm.

And, subsequently, on September 22, 1977, union representatives were specifically instructed, by the Association, to *stop sending grievances*, relating to Respondent particularly, for grievance committee consideration.

d. *The unfair labor practice charges*

Long before the Company's resignation from the Association, Session had filed charges against Respondent, contending that company representatives had interfered with the Section 7 rights of the firm's employees by "organizing and sponsoring" the subsequently voided November shop chairman election, and had discriminated against him by a temporary December 1976 layoff. The Union's parent organization, privy to the Association's contract, had—likewise—filed a charge against Respondent and the Association. On May 24, 1977, a consolidated complaint issued.

Therein, the General Counsel charged that Respondent had committed various 8(a)(1) unfair labor practices; that Section 8(a)(3) had been violated by Session's December 1976 layoff; and that Respondent and the Association had violated Section 8(a)(1) and (5) and Section 8(d), by their failure and refusal to process grievances, pursuant to contractually specified step-two grievance procedures.

2. The Board's Decision

Following a hearing thereon, the Board issued a Decision wherein the Administrative Law Judge had found that both Respondent and the Association had committed the unfair labor practices charged. On January 29, 1979, the Board issued its Decision affirming the findings and conclusions of the Administrative Law Judge, and adopting his recommended Order with modifications.[3] Respondent was ordered, *inter alia*, to cease and desist from specified 8(a)(1), (3), and (5) violations; to offer Session reinstatement, with backpay; to bargain collec-

[2] Shortly after the second of these grievance committee meetings ended, Respondent's contractually covered workers conducted a plant election, whereby Session was purportedly replaced by another employee as the Union's shop chairman. This Board subsequently found (in a Decision to be noted hereinafter) that Respondent's management had improperly interfered with and participated in its employees' internal union affairs, by certain conduct chargeable to company representatives related to this shop chairman election. Directly following the employees' vote, however, the Union had independently voided the election's result because of various "procedural defects" which had been previously noted.

[3] Reported at 240 NLRB 400.

My factual recitals herein with respect to Respondent's collective-bargaining history, developments at Respondent's plant, and the genesis of the General Counsel's consolidated complaint, regarding this previously litigated matter, derive from this Decision. With respect thereto, I have taken official notice. Though the Association declared its willingness to comply with the Board's directives, Respondent filed a petition for review of the Board's Order. Subsequent to the hearing finally held before me with regard to the present matter, the Court of Appeals for the Seventh Circuit, on January 7, 1980 (612 F.2d 1028), enforced, in full, the Board's remedial Order with respect to Respondent's prior unfair labor practices.

tively in good faith, upon request, by honoring the terms of the Association's contract with the Union's parent body, *including the processing of employees' grievances under the contractual grievance procedure*; and to post a prescribed notice.

3. Subsequent developments

Shortly after the Board's Decision with respect to Respondent's prior unfair labor practices issued, International District Representative Toby Truitt notified Respondent in a letter which Respondent received on February 6, 1979, that the Union wished to negotiate a new agreement for a period following the Association's contract's forthcoming April 30, 1979, termination date.

So far as the record herein shows, Respondent's management vouchsafed no prompt reply. The Union's representative likewise did not immediately pursue the matter.

On February 26, 1979, Linzy Stallin, one of Respondent's rank-and-file foundry workers, filed with the Board's Regional Office a petition for the Union's decertification, Case 13-RD-1213. The petition was supported with a concurrently submitted document containing 13 signatures, subscribing to the following statement:

> The undersigned employees of the Chicago Magnesium Castings Company presently represented by the International Molders and Allied Workers Union, Local No. 233 wish to have the National Labor Relations Board conduct an election, since we believe a majority of employees in our unit no longer want to be represented by the above union.

The signature sheet had been circulated—presumably during February—by Linzy Stallin; he had, finally, requested Respondent's foundry superintendent to have copies made. When provided with the document by his superintendent, Respondent's president, Ron Larson, had promptly prepared two photocopies. He had then returned to Stallin the original, plus one copy, while retaining the second photocopy.[4] While a witness, President Larson testified that he had then counted the number of signatures garnered on Stallin's signature sheet; he had found 13. According to Larson, whose testimony in this respect has not been challenged, Respondent then employed 22 foundry production and maintenance workers, who had been covered by the Association's contract.

4. The Union's requests with respect to grievance adjustment

On February 27, 1979, District Representative Truitt dispatched a letter, which the Association received on March 1, requesting a second-step grievance meeting with respect to grievances pending at several firms, Respondent included.[5]

In his March 1 letter to Treacy, the Association's counsel claimed "little or no knowledge" with respect to grievances wherein Respondent might be concerned; he reported, however, that union representatives had declared there were some 85 such grievances pending, with respect to which the Union would seek resolutions. Echlin declared that, because of the Board's previously promulgated Decision, the Association was required to meet with union representatives to process such grievances, consistently with their still-current contract's grievance procedure; he noted that, in compliance with the Board's Decision, the Association's representatives were planning to meet with union spokesmen on grievances involving Respondent. Treacy was therefore requested to have Respondent provide the Association with copies of all pending grievances. Further, Respondent's labor relations counsel was requested to have his client:

> . . . prepare a written report on each of the grievances, setting forth the facts, the provisions of the Agreement alleged to have been violated, the position of both the Company and the Union as taken in the first step of the grievance procedure, and any procedural issues, such as timeliness, that either the Company or the Union may have asserted.

In reply in a March 22 letter, Attorney David N. Barkhausen, counselor Treacy's associate, proclaimed Respondent's readiness to honor the Association's contract's grievance procedure, including that document's step-two settlement provisions. Barkhausen reported, however, that Respondent was "unaware" with respect to any "pending" step-two grievance matters; he declared that his client had not been informed regarding:

> . . . any requests that grievances be referred to the Grievance Committee in the two years since the Company resigned from the Association.

Echlin was therefore advised that Respondent's counsel had requested Union District Representative Truitt to report whatever grievances might be pending, which were "subject to referral to the Step 2 Grievance Committee within the time limits set forth" within the grievance provision of the Association's contract.

On April 16, Truitt notified Barkhausen that grievances pending with respect to Respondent had been sent to the Association in accordance with contractual requirements. Respondent's counsel was referred to the Association's grievance committee chairman, Hodgson, for further information.

5. Respondent's refusal to bargain

In the meantime—sometime during April 1979 on a date which the Union's district representative could not recall precisely—he had telephoned Respondent's presi-

[4] When requested to photocopy the original signature sheet, Larson had noted that it lacked a date. He had suggested to Stallin that it should be dated. When subsequently presented to the Regional Office, in support of Stallin's RD petition, the document carried a 2-26-79 date notation.

[5] This factual determination rests on the hearsay report with respect thereto proffered by the Association's counsel, Bernard J. Echlin, in this March 1 letter sent to William B. Treacy, Respondent's labor relations counsel. Echlin's report has not been challenged; his letter, proffered by Respondent and received for the record pursuant to stipulation, may be considered "reliable hearsay" with respect to the development noted. See Fed. R. Evid., Sec. 803(24) in this connection.

dent, Ron Larson, to suggest the commencement of contract negotiations; Truitt had declared that they could negotiate a contract which "went along" with the Association's new contract, which was then being discussed, or negotiate some "independent" contractual consensus. Larson, however, had postponed talk about a possible negotiating session; he had declared that he would have to confer with Respondent's labor relations counsel.

Shortly thereafter, Truitt had telephoned Treacy himself, who had declared that he had no objections with respect to negotiating an independent contract; he promised that he would "get with" Respondent shortly.

On April 18, however, Respondent's president wrote Truitt a letter which Treacy had helped him draft notifying the Union's representative that, with due regard for the circumstances, Respondent could no longer legally bargain with the Union for some new contract.[6] Respondent requested the Union to provide some evidence that it currently represented a majority of the production and maintenance workers then in the Company's employ. Within 2 days, however, the Union filed its original 8(a)(1) and (5) charge herein.

6. Subsequent developments

a. *Respondent's April 23 meeting*

On April 23, Respondent conducted a meeting in its plant lunchroom for its foundry production and maintenance workers. At the outset, President Larson introduced Treacy as Respondent's labor relations counsel.[7] Treacy reported that this Board had found Respondent's withdrawal from the Association legal; but that it had concurrently found Session's termination unlawful. He notified the workers present that Respondent was "in the process of appealing" the Board's adverse determination. He reported further that Stallin's previously filed RD petition had been dismissed; he declared his opinion, nevertheless, that a possible future vote on the Union's decertification would not be precluded, but would have to be merely "held in abeyance . . . until such time" as there were no unsettled unfair labor practices.

While a witness, Treacy conceded that he had said nothing with regard to Respondent's possible relationship with the Union following the termination of the Association's contract; nobody had raised a specific question with respect thereto, and he had volunteered no statement.

Following Treacy's remarks, President Larson solicited queries. Several employees raised questions—particularly with regard to some six matters of general concern—with respect to which Respondent's counsel responded.

In his brief, the General Counsel's representative contends that, with respect to three particular subjects discussed during the meeting, Treacy or Respondent's president, *expressly or by implication*, proffered promises of benefit. With respect thereto, the synthesized credible testimony of the General Counsel's and Respondent's witnesses (which, considered in totality, reflects few significant conflicts or discrepancies) will support determinations:

First: That, when queried with respect to whether Respondent's workers would lose whatever pension benefits they might have earned, pursuant to their firm's prior contractual commitments, Treacy declared that—consistently with Federal law—the lack of a continuing contract between Respondent and the Union would not cause them to lose "any portion of any pension" with respect to which they had vested rights, but that they would—not necessarily—accrue further pension rights.[8]

Second: That, when confronted with statements which reflected employee concern with respect to whether they would lose insurance coverage, should they no longer enjoy union representation, Respondent's counsel declared he would consider it "perfectly proper" for Respondent to provide insurance coverage, with or without a union; following Treacy's statement, President Larson declared Respondent's willingness to provide such coverage, with benefits "substantially the same" as those which were currently being maintained.

Third: That, when questions with regard to further fringe benefits holidays and vacation privileges particularly were raised, Treacy reported that benefits "substantially equivalent" to those which Respondent's workers currently enjoyed, and "virtually the same" as those which association members might subsequently consent to provide, pursuant to contract, would be maintained.[9] In this connection, the General Counsel's witness, laboratory technician Marilyn Reynolds, testified further that Treacy declared Respondent had always "gone along" with pay raises which the Association had negotiated,

[6] More particularly, Larson referred to Stallin's previously filed decertification petition, which the Board's Regional Director had, shortly following its submission, dismissed, but solely because Respondent's prior unfair labor practices had not yet been remedied. Respondent's president noted his withdrawal from association membership; he commented that "as a result" Respondent's employees were no longer "part of the overall unit of Association employees" but constituted a separate and distinct bargaining unit. With respect to this "separate and distinct" group, Respondent contended that the Union could no longer claim majority representative status.

[7] While a witness, Treacy declared that the meeting had been convened to discuss the "legal rights" of Respondent's employees, and what their position would be, following the prospective April 30 termination of the Association's collective-bargaining contract with the Union's parent organization. He testified that he had been requested to discuss the status of Respondent's prior NLRB litigation, to explain the "legal implications of the situation" consequent thereon, and to answer whatever questions Respondent's workers might present.

[8] Respondent's counsel, so far as his testimony shows, did not explain his passing reference to *vested* pension rights. While a witness, Treacy conceded that, when he spoke, he had not known—specifically—how many of his employee listeners had previously acquired such *vested* rights, or how many merely had some limited period of service, which would not, yet, suffice to guarantee them *vested* pension rights. The General Counsel's witnesses testified generally that they were left with the "impression" that "none of [their] pension would be taken away" from them. I so find.

[9] More particularly, Respondent's counsel told the workers present—so his credible testimony shows—that, throughout some 20 years, both during periods when they had voted for union representation and periods in which they had voted to reject such representation, Respondent's "pay and benefits" had "pretty much" matched those which association members had provided; Treacy commented that he considered Respondent legally privileged to declare that its policies, in this respect, would be maintained. Respondent's president had—so I find—declared then that his firm would "go on" just as it had "gone on" previously.

and that they would "go along" with any such raises again with a May 1 retroactive date. With respect to Reynolds' specific testimonial recital, Respondent's counsel proffered no denial; upon this record, considered in totality, the laboratory technician's testimony merits credence.

Summoned as the General Counsel's witness, John Smith, Respondent's welder and grinder—though he testified with some hesitation and lack of certainty—corroborated Reynolds generally. When prompted generally by the General Counsel's representative, however, he recapitulated statements by Respondent's counsel which Reynolds had not recalled. Specifically, Smith reported that Treacy had—some "four or five" times during this April 23 meeting—declared that he would not promise Respondent's workers anything, and that they would "have to talk it over" with the Company. I so find.

By the time these subjects had been canvassed, the meeting had lasted some 15 or 20 minutes. Following some general comments regarding a possibly prospective strike against various association member firms, and comments regarding what Respondent's employees could or might do should such a strike develop, Treacy left. Shortly thereafter, the group dispersed.

b. *The Union's grievances remain unresolved*

Despite the Company's April 18 declaration that it could no longer bargain with the Union for a new contract, absent some showing that the organization represented a majority of Respondent's current employees, Counselor Barkhausen dispatched a letter, dated April 25, to Chairman Hodgson of the Association's grievance committee; Hodgson was notified that Respondent remained:

> . . . prepared to consider grievances which are now properly subject to referral to the Step 2 Grievance Committee within the time limits set forth in Section 8.1 of the [still current, but shortly due to expire] contract . . . .

The Association's grievance committee chairman was notified further that—since District Representative Truitt had referred Respondent's counsel to him—they would "look forward" to hearing from him with regard to these matters.

So far as the record shows, however, Chairman Hodgson never vouchsafed a reply. Whatever grievances the Union may have considered "pending" with respect to Respondent's employees, within some period preceding the April 30, 1979, termination date of the Association's contract, have never been resolved pursuant to that contract's step-two grievance procedure.

C. *Conclusions*

1. The unit appropriate for collective bargaining

The General Counsel contends in his complaint that the bargaining unit defined in the terminated association contract—modified to reflect Respondent's withdrawal from that multiemployer group—should be considered a unit appropriate for collective-bargaining purposes, so far as Respondent is concerned. Thus, the General Counsel seeks a determination that the following employees currently constitute such a bargaining unit:

> All foundry production and maintenance employees of the Employer, but excluding all office clerical employees, janitors, watchmen, supervisors as defined in the Act, and employees employed in another collective bargaining unit represented by another duly authorized labor organization.

Although Respondent has formally denied the designated unit's appropriateness, no evidence has been proffered herein calculated to counter the General Counsel's contention. Rather, President Larson testified that no new job classifications in Respondent's production and maintenance employee complement have been created for some time. On this record, the bargaining unit defined by the General Counsel constitutes a unit which—so I find—merits Board designation as a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the statute.

2. The Union's majority representative status

Respondent herein defends its conceded withdrawal of recognition, and consequent referral to renegotiate a contract or bargain with the Union, *for a bargaining unit confined to the Company's foundry production and maintenance employees*, on the ground that it possessed a good-faith doubt regarding the Union's majority representative status in its current bargaining unit complement. In this connection, Respondent relies on Stallin's circulated petition, presumptively signed by 13 of Respondent's 22 foundry workers, proffered in support of the decertification petition which he subsequently filed.[10] The General Counsel's representative, however, contends, responsively, that Respondent's reliance on Stallin's circulated signature sheet, which had prompted its consequent withdrawal of recognition, should not be considered sufficient to defeat its statutorily grounded bargaining duty, because of this Board's prior determination that Respondent had violated Section 8(a)(1), (3), and (5) of the statute, followed by the firm's conceded failure or refusal to comply with remedial Board directives. Upon this record, I concur.

Respondent's defense essentially challenges the General Counsel's reliance on the presumption that, under the circumstances found here, the Union may still be considered the majority representative of Respondent's employees. The controlling principles giving rise to that presumption have frequently been defined in Board's Deci-

[10] In his brief, Respondent's counsel states that Respondent's position was based on the *February 26* filing of Stallin's formal decertification petition. The record shows, however, that Respondent did not *assert* its purported good-faith doubt prior to *April 18*, when it notified the Union that bargaining, with respect to employees within a "separate and distinct" group confined to Respondent's foundry workers would—in its view—violate the law. By the latter date, Stallin's formal RD petition had, presumably, been dismissed by the Board's Regional Director; the record warrants a determination, which I make, that the Regional Director's refusal to process the petition was known to Respondent's management representatives and labor relations counsel, when the firm's refusal letter was sent.

sions. See, e.g., *Sahara-Tahoe Corporation, d/b/a Sahara-Tahoe Hotel*, 229 NLRB 1094 (1977), enfd. 581 F.2d 767 (9th Cir. 1978), citing *N.L.R.B.* v. *Tahoe-Nugget, Inc.*, 584 F.2d 293 (9th Cir. 1978), where the Board declared:

> It is well settled that the existence of a prior contract, lawful on its face, raises a dual presumption of majority—a presumption that the Union was the majority representative at the time the contract was executed, and a presumption that its majority continued at least through the life of the contract. Following the expiration of the contract, the presumption continues and, though rebuttable, the burden of rebutting it rests on the party who would do so. To withdraw recognition lawfully, either this presumption must be overcome by competent evidence that the Union in fact did not represent a majority at the time of the withdrawal, or the Employer must establish on the basis of objective facts that it had a reasonable doubt as to the Union's continuing majority status.

In its decision with respect to Respondent's prior unfair labor practices, the Board found that Respondent and the Union—through its parent body—were privy to a collective-bargaining contract lawful on its face. Though Respondent became privy to that contract, initially, when it became an association member, that factor does not vitiate a continuation of the presumption with respect to the Union's continued majority representative status, even though Respondent subsequently withdrew, in a proper manner, from the multiple-employer group. This Board has consistently held—with judicial concurrence—that a presumption of majority status, consequent upon a concerned employer's voluntary recognition of a union as the exclusive bargaining representative for its employees, continues after that employer's withdrawal from a multiple-employer group contractually bound. *Sahara-Tahoe Corporation d/b/a Sahara-Tahoe Hotel, supra; Nevada Lodge*, 227 NLRB 368, 373-374 (1976); *Tahoe Nugget, Inc.*, 227 NLRB 357, 363-364 (1976). Consequently, the Union here—which could properly claim an irrebutable presumption that it was the majority representative of Respondent's employees until April 30, 1979, when its contractual relationship with Respondent terminated—could likewise claim representative status, based on a continued, *rebuttable* presumption thereafter.

Were this a case where Respondent had not previously been found responsible for "flagrant and egregious" unfair labor practices, then—following the Association contract's termination—the firm could lawfully withdraw recognition by refuting the presumption noted.[11] Consistently with well-settled decisional doctrine, however, good-faith doubts with regard to a labor organization's continued majority status can be generated only within a context free from the coercive effects of concurrent or prior unfair labor practices. Employers may not avoid their duty to bargain by relying on a union's loss of majority status where that loss is attributable to their unlawful conduct.

Thus, a concerned employer—specifically Respondent herein—cannot lawfully refuse to bargain where there are prior unremedied unfair labor practices, even when presented with a decertification petition or some other evidence suggestive of the previously recognized union's presumptive loss of majority status, so long as those prior unremedied unfair labor practices were sufficiently serious to warrant a determination that they possessed an inherent tendency to produce disaffection and, thereby, contributed to the union's loss of majority status. See *Pittsburgh and New England Trucking Company*, 249 NLRB 833 (1980); *Olson Bodies, Inc.*, 206 NLRB 779, 780 (1976); compare *Guerdon Industries, Inc.*, 218 NLRB 658, 660-661 (1975), in this connection.

Here, Respondent's prior, unremedied, unfair labor practices clearly—possessed such a sufficiently serious thrust. They compassed a no-solicitation rule found overbroad; interference chargeable to Respondent's management representatives, with respect to the Union's internal affairs; the discriminatory layoff of the Union's recognized shop chairman, followed by the firm's specific refusal to reinstate him; and Respondent's failure—despite verbal requests directed to President Larson and Respondent's labor relations counsel—to process grievances ripe for disposition, pursuant to the two-step grievance procedure of the Association's contract.[12] That such unfair labor practices were reasonably calculated to impair the Union's capacity to function as the bargaining representative of Respondent's foundry workers; that the Union's representative status was thereby denigrated; and

[11] Respondent would have to show, through competent evidence, either that the Union did not, *in fact*, represent a majority of the firm's foundry workers when it withdrew recognition, or that its challenged withdrawal had been predicated upon a reasonably grounded good-faith doubt, based on objective facts, with regard to the Union's continued majority representative status.

[12] I note, in this connection, Administrative Law Judge Denison's determination—affirmed by the Board in its prior Decision—that grievances filed *after* Respondent's March 31, 1977, withdrawal from association membership were still "pending" when his September 29, 1978, Decision issued. See 240 NLRB at 406. While a witness, Respondent's president conceded that he had received "grievances" presented by the Union's shop committee representatives during 1977; the last grievance he recalled receiving had been submitted sometime in mid-1978. President Larson contended, however, that—before the association contract's April 30, 1979, termination date—these grievances had "all" been "dropped" within Respondent's view, because the Union had failed to "take them into the second step" within their contractual grievance procedure's defined time limits. I find Larson's suggestion that these grievances no longer required consideration and disposition—to say the least—disingenuous. *If, indeed, grievances presented on behalf of Respondent's foundry workers had not been timely submitted for "Step 2" disposition following Respondent's withdrawal from association membership*, the Union's possible failure to proffer them must be considered attributable to Respondent's refusal to participate in, and the association committee's refusal to conduct, step-two grievance meetings concerned with grievances filed by Respondent's workers, subsequent to March 31, 1977, specifically. The Union cannot be faulted, nor can Respondent claim exculpation from the Board's currently viable directive that these "pending" grievances should be processed, because union representatives may not have previously chosen to pursue a futile course. In this connection, I note further Administrative Law Judge Decision's determination that—on September 22, 1977, specifically—the Union's representatives were "instructed" by association spokesmen to stop forwarding grievances, relating to Respondent, for step-two disposition. Since association members of the contractually established grievance committee clearly functioned as Respondent's agents, in connection with step-two grievance dispositions, Respondent cannot, now, claim exculpation with respect to processing grievances which may not have been forwarded within contractually defined time limits because of the Association's statutorily proscribed directive.

that employee disaffection with union representation would, most likely, be manifested consequentially cannot be doubted. Respondent's violations went to the heart of the statute—and they were, clearly, violations of a type whose consequences would be likely to linger.

With matters in this posture, I find that Respondent's April 18, 1979, withdrawal of recognition from the Union—coupled with its concomitant refusal to negotiate a contractual consensus pending some demonstration by the Union that it *currently* represented a majority of Respondent's foundry production and maintenance workers—cannot be considered justified, on the theory that Stallin's decertification petition, though supported by a putative majority of Respondent's foundry production and maintenance workers, furnished Respondent with a sufficient objective basis for a good-faith doubt that the Union continued to represent a majority of the firm's bargaining unit employees.

3. Respondent's refusal to bargain

Upon this record, which in my view clearly warrants a determination that Respondent has not rebutted the presumption of the Union's continued right to claim majority representative status, I find that Respondent's withdrawal of recognition and refusal to negotiate a new contract constituted a refusal to bargain, statutorily proscribed.

With respect to the General Counsel's contention that Respondent's management violated its statutory duty to bargain with the Union herein further when it dealt directly with Respondent's foundry workers during the April 23 lunchroom session, little more need be said.

The General Counsel contends that Respondent's conduct now under consideration violated the statute because President Larson and Treacy solicited the firm's workers to present grievances, and proffered promises of benefit, particularly with respect to pension status, insurance coverage, prospective pay scales, and certain fringe benefits.

In part, the General Counsel's contentions merit concurrence. There can be no doubt that Respondent's representatives planned their session to provide a forum where the concerns of employees might be ascertained, and corporate responses provided. So far as the record shows, however, grievances were not specifically solicited.[13] Nevertheless, President Larson and Treacy clearly "dealt directly" with the firm's workers when they discussed the specific subjects previously mentioned. *First*, with respect to pensions, it should be noted that Treacy declared Respondent's foundry workers would lose *none* of their previously accrued pension rights, to the extent that those rights might have *vested* prior to their union contract's termination. Treacy's statement may have been "legally" correct. Since, however, he did not explain "vesting" with respect to pension rights—while proffering his statement without having determined whether some of his listeners might not have spent sufficient time in Respondent's service to gain such rights—his comment was potentially misleading. Two of Respondent's workers present—at least—considered Treacy's statement completely reassuring; with respect to both of them—and possibly others—it might conceivably have been less complete, and more sanguinely suggestive, than the circumstances required. *Secondly*, with respect to insurance coverage, Treacy's comments clearly reflected a promise that Respondent's workers would lose nothing, should the firm be required to procure insurance for a limited group, separate from the coverage which might be provided for their fellows working for association member firms. This promise was, clearly, a promise of benefit. *Thirdly*, with respect to prospective pay scales and fringe benefits, Respondent committed itself to match those which might thereafter be provided for workers covered by collective-bargaining contracts between the Union's parent body and association member firms. Upon this record I note—consistently with the General Counsel's contention—that Respondent's commitment did not merely reflect its willingness to maintain the status quo; to the extent that Respondent may not have—historically—provided pay scales and benefits which matched or measured up to those negotiated by the Union's parent, Treacy's commitment represented a promise to *improve* certain pay scales, and possibly fringe benefits, such as vacation privileges particularly.

More particularly, however, Respondent's comments—when confronted with the declared concerns of the firm's workers—constituted direct dealing because they were specifically premised on the conceded "assumption" that, following the association contract's termination, the firm would not be required to recognize or negotiate with the Union herein. That assumption has been found without warrant. And, since Respondent had—previously—refused to respond when confronted with the Union's request that contract negotiations begin, the firm would, of course, be responsible for permitting contractual benefits to lapse. When, having taken this position, Respondent sought to remedy the situation by unilaterally proffering continued or possibly "improved" benefits, its commitments proceeded contrary to Section 8(a)(1)'s proscription, and constituted bargaining with individual employees, rather than with their bargaining representative, in violation of Section 8(a)(5) of the statute. See *Impressions, Inc.*, 221 NLRB 389, 404 (1975), in this connection. I so find.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

Respondent's course of conduct set forth in section III, above, since it occurred in connection with Respondent's business operations described above, has had, and continues to have, a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States. Absent correction, such conduct would tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

[13] If grievances had been solicited, such solicitation—standing alone—would not have flouted the statute. This Board has held that the solicitation of grievances violates a concerned employer's statutorily defined duty only when conjoined with some indication—vouchsafed explicitly, or tacitly by way of suggestion—that grievances voiced will be given serious consideration, and possibly remedied.

With due regard for my findings of fact, previously set forth herein, and upon the entire record in this case, I make the following:

CONCLUSIONS OF LAW

1. Respondent Chicago Magnesium Castings Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Molders and Allied Workers Union, Local 233, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. All foundry production and maintenance employees of Chicago Magnesium Castings Company, exclusive of all office clerical employees, janitors, watchmen, supervisors as defined in the Act, and employees employed in another bargaining unit represented by another duly authorized labor organization, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9(b) of the Act.

4. Throughout the period with which this case is concerned, the Union has been, and remains, entitled to claim recognition as the exclusive representative of Respondent's employees in the bargaining unit found appropriate herein, within the meaning of Section 9(a) of the Act.

5. Respondent's management representatives—by their withdrawal of recognition from the Union as the representative of Respondent's employees within the bargaining unit herein found appropriate; by their refusal to meet with the Union's representatives, for the purpose of negotiating a collective-bargaining contract covering those employees, until the Union provided evidence that it represented a majority designated; and by their direct dealing with Respondent's employees, within that bargaining unit, with respect to certain terms and conditions of their employment—have refused, and continue to refuse, to bargain collectively in good faith with the Union as the exclusive representative of Respondent's employees. Respondent has thereby engaged—and continues to engage—in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. The unfair labor practices specified affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Since I have found that Respondent has engaged, and continues to engage, in certain specific unfair labor practices, I shall recommend a Board directive that Respondent cease and desist therefrom, and take certain affirmative action, including the posting of appropriate notices, designed to effectuate statutory policies.

Specifically, I shall recommend that Respondent be ordered to recognize International and Allied Workers Union, Local 233, AFL-CIO-CLC as the exclusive bargaining representative of its foundry production and maintenance employees, and to bargain collectively with that organization, upon request, with regard to their wages, hours, working conditions, and other terms and conditions of their employment.[14] Respondent should further be required to embody any consensual "understanding" reached with the Union, as a result of such collective bargaining, within a signed agreement.

Upon the foregoing findings of fact and conclusions of law, and upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, I hereby issue the following recommended:

ORDER[15]

The Respondent, Chicago Magnesium Castings Company, Blue Island, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recognize and bargain collectively with International Molders and Allied Workers Union, Local 233, AFL-CIO-CLC, as the exclusive bargaining representative of the employees within the appropriate bargaining unit described below, with regard to wages, hours, working conditions, and other terms and conditions of employment.

> All foundry production and maintenance employees of Respondent, exclusive of all office clerical employees, janitors, watchmen, supervisors as defined in the Act, and employees employed in another bargaining unit represented by another duly authorized labor organization.

(b) Interfering with, restraining, or coercing its employees in any like or related manner with respect to the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Recognize and, upon request, bargain collectively with International Molders and Allied Workers Union, Local 233, AFL-CIO-CLC, as the exclusive bargaining representative of employees in the appropriate unit described above, with regard to their wages, hours, working conditions, and other terms and conditions of their employment, and, if an understanding is reached, embody such understanding within a signed agreement.

(b) Post at its Blue Island, Illinois, facility copies of the attached notice marked "Appendix."[16] Copies of said

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[14] The record herein persuasively suggests that various grievances filed on behalf of Respondent's bargaining unit employees, pursuant to grievance procedures set forth within the expired association contract, may not have been resolved or fully processed consistently with those contractually provided procedures—*subsequent to this Board's Decision and Order promulgated with respect to Respondent's prior unfair labor practices*—because of positions taken, with respect to the presumptively "dropped" status of those grievances, for which Respondent may properly be considered responsible. Respondent's duty to bargain herein defined should therefore be construed to compass a duty to proceed with the processing of such unresolved grievances, regardless of "procedural issues such as timeliness" which may have arisen with respect to them consequent upon Respondent's prior refusal to process them.

[15] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[16] In the event this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursu-

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notice, on forms provided by the Regional Director for Region 13, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

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ant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."